

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.050, 9.68A.060, or 9.68A.090, ((or 9.68A.100;)) it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least eighteen years of age based on declarations by the alleged victim.

~~(4) ((In a prosecution under RCW 9.68A.050 or 9.68A.060, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least sixteen years of age based on declarations by the alleged victim))~~ In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, it shall be an affirmative defense that the defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, the state is not required to establish the identity of the alleged victim.

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 15, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 33

[House Bill No. 1170]

TESTAMENTARY POWERS OF APPOINTMENT

AN ACT Relating to powers of appointment; and amending RCW 11.95.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 36, chapter 30, Laws of 1985 and RCW 11.95.060 are each amended to read as follows:

(1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may

grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the instrument granting the power, that manifests an intent to exercise the power ((and that identifies the instrument granting the power and its date)). Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made if the person had no knowledge that the power had been exercised and had made a reasonable effort to determine if the power had been exercised. A testamentary residuary clause which does not manifest an intent to exercise a power is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be revoked in the same manner at any time before the property becomes distributable upon occurrence of the event specified, except that any contrary provisions in the written instrument exercising the power, including provisions stating the exercise of the power is irrevocable, shall be controlling. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised.

Passed the House February 1, 1989.

Passed the Senate April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 8, 1989.

CHAPTER 34

[Substitute House Bill No. 1169]

DECEDENTS' ESTATES—BENEFICIARIES—DISCLAIMER OF INTEREST

AN ACT Relating to disclaimers of interests by beneficiaries; amending RCW 11.86.090; adding new sections to chapter 11.86 RCW; and repealing RCW 11.86.010, 11.86.020, 11.86.030, 11.86.040, 11.86.050, 11.86.060, and 11.86.070.

Be it enacted by the Legislature of the State of Washington: